

MINNESOTA STATE ETHICS COMMISSION

ADVISORY OPINION NO. 6

September 9, 1974

Issued to:

Mr. Lloyd L. Brandt
Vice President
First Bank System
Minneapolis, Minnesota

Syllabus

6. Corporate Plans.

A corporation doing business in Minnesota may establish a nonpartisan or conduit plan to solicit and collect voluntary contributions from employees in order to facilitate the employee's ability to make political contributions, if the individual employee making the contribution retains sole control over the disposition of his accumulated funds. Under these circumstances the corporation is not required to register and report as a political committee or fund. Minnesota law does not permit, however, the nonconduit or partisan plan where the individual employee does not control the final disposition of his accumulated funds.

TEXT

You have requested an advisory opinion from the Commission based upon essentially the following:

FACTS

First Bank System has established for its employees a political contribution program called the First Bank System Minnesota Good Government Program. First Bank System informs its employees that this Program is available to them, and encourages employees to contribute through the Program on a voluntary basis to candidates for Federal, State and local offices as a means of participating in the political process. First Bank System furnishes forms on which the individual employees may indicate the amount of their contributions. The contributing employee may designate a particular candidate or party as a recipient of the contribution (conduit or nonpartisan plan). In that case, the Treasurer of the Program follows the instructions of the employee, and the name and address of the employee contributor is supplied to the candidate or political party receiving the contribution. If the employee makes no designation of a particular candidate or party to receive the contribution, then the corporation's committee charged with operating the program selects the candidates or parties which will receive the undesignated funds and

decides the amounts to be allocated to each candidate or party (nonconduit or partisan plan).

Employees are given the option of having money withheld from their paychecks for the Program. First Bank System officers and employees provide the services necessary to operate the Program as part of their regular duties, and First Bank System bears all administrative and other costs of the Program.

Before taking steps to distribute funds under the Program to Minnesota statewide or legislative candidates, you ask the Commission the following:

QUESTIONS

1. Under Minnesota law, can a corporation doing business in Minnesota establish and administer either a nonpartisan (conduit) plan, or a partisan (nonconduit) plan, to solicit and collect voluntary contributions from its employees whereby distributions are made to statewide or legislative candidates for offices in Minnesota?
2. To the extent that the answer to the first question is in the affirmative, what are the registration and reporting requirements for such a plan under Minnesota law?

OPINION

It is the opinion of the Commission that under Minnesota law the corporation may receive and distribute contributions from employees to state parties or candidates for state or local offices in Minnesota where the designation is made by the employee (nonpartisan plan), but that the corporation may not collect undesignated employee contributions and distribute them to such parties or candidates at the discretion of the corporation (partisan plan). If a corporation elects to use the nonpartisan plan, it need not register and report as a political fund under Minnesota law.

By way of background, the First Bank System Program resembles the plans established in Minnesota by a number of corporations under Federal law. Some of these plans, such as that of the First Bank System, are operated through a Committee registered under Federal law, so as to permit the corporation itself to allocate undesignated employee contributions to parties or candidates chosen by the corporation (nonconduit), as well as to distribute designated contributions (conduit). Other such plans do not involve the establishment of a Committee under Federal law, but merely involve a purely conduit system under which individual accounts are established in which employee contributions are accumulated for subsequent distribution by the corporation to candidates solely as directed by the employee.

Under Minnesota law, corporations are prohibited from making political campaign contributions:

211.27 CORPORATIONS NOT TO CONTRIBUTE TO POLITICAL CAMPAIGN.

Subd. 1. No corporation doing business in this state shall pay or contribute, or offer, consent, or agree to pay or contribute, directly or indirectly, any money, property, free service of its officers or employees or thing of value to any political party, organization, committee, or individual for any political purpose whatsoever, or to promote or defeat the candidacy of any person for nomination, election, or appointment to any political office. If any corporation shall be convicted of violating any of the provisions of this chapter, it shall be subject to a penalty in the amount not exceeding \$ 10,000 to be collected as other claims or demands for money are collected; and, if a domestic corporation, in addition to that penalty, it may be dissolved; and, if a foreign or non-resident corporation, in addition to that penalty, its right to do business in this state may be declared forfeited. (Emphasis supplied.)

A "political purpose" is defined under Minn. Stat. 211.01, subd. 2, as follows:

Subd. 2. Any act shall be deemed to have been for "political purposes" when the act is of a nature, **is** done with the intent, or is done in such a way, as to influence or tend to influence, directly or indirectly, voting at any primary or election or on account of any person having voted, or refrained from voting, or being about to vote or refrain from voting at any election or primary.

This definition appears applicable to elections not involving candidates, since Minn. Stat. 211.27 contains a separate additional clause prohibiting contributions " . . . to promote or defeat the candidacy of any person." The existence of this latter clause indicates that it is the pertinent clause to the present situation.

Likewise, under Minn. Stat. 10A.01, subd. 7, "contribution" is defined as follows:

Subd. 7. "Contribution" means:

(a) A gift, subscription, loan, advance, the providing of supplies, materials or equipment, or deposit of money or anything else of value made to influence the nomination for election or election of a candidate to office;

(b) A transfer of funds between political committees or political funds; or

(c) **The** payment of compensation for the personal services of another person which are rendered to a candidate, political committee or political fund to influence the nomination for election or election of a candidate to office by any person other than that candidate, political committee or political fund.

"Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee or political fund, or coverage by news media, but only while acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments. (Emphasis supplied.)

The question under the statutes in the case of each plan is whether the expenditure of the corporation's resources is made in such a way as to promote any candidacy contrary to Minn. Stat. 211.27, or to influence the election of any candidate under Minn. Stat. 10A.01, subd. 7. *Webster's Seventh New Collegiate Dictionary* defines the verb "promote" as meaning:

"2a: to contribute to the growth or prosperity of: FURTHER . . .

Likewise, the verb "influence" is defined as meaning:

"I: to affect or alter by indirect or intangible means: SWAY 2: to have an effect on the condition or development of MODIFY"

In applying the language of the statutes, there is clearly a difference between the nature of the corporate activity engaged in under the conduit (nonpartisan) plan, as opposed to the nonconduit (partisan) plan.

Conduit Plan

Under the conduit or nonpartisan plan, the employee alone makes the selection of each candidate or party which will receive his contribution. In this case, the corporation is expending its resources solely as an aid to the employee; and any benefit to any candidate or party receiving the contribution is merely coincidental with the employee's selection. The corporation's activity is purely neutral in character, and is intended purely to encourage political contributions by employees in general. It is only the employee's decision, and the employee's contribution, which operates to promote or influence the outcome of any particular election. In our opinion, therefore, it follows that the operation of the nonpartisan or conduit plan is not prohibited under the Minnesota law. The corporation is not expending its resources to "promote" or "influence" the election of any candidate as those terms are used in the statutes. This result is consistent with the clear intent of the statute to prohibit corporate influence directed to the benefit of a particular candidate. See *LaBelle v. Hennepin County Bar Association*, 206 Minn. 290, 288 N.W. 788 (1939).

Nonconduit Plan

By contrast, the operation of the nonconduit or partisan plan represents a corporate expenditure for services and other costs clearly intended to promote or influence the election of certain specific candidates for election. Under the nonconduit plan the corporation, through the appointed committee, is definitely exerting its influence by deciding to direct accumulated employee contributions in such manner as the corporation deems most beneficial to its interests. This is clearly proscribed by the express language of the above statutes.

Likewise, under the nonconduit plan, the corporation would be required to establish a registered political fund in order to accumulate the employee contributions:

[10A.01, subd. 16](#). "Political fund" means any accumulation of dues or voluntary donations by an association other than a political committee, which accumulation is collected or expended for the purpose of influencing the nomination for election or election of a candidate. (Emphasis supplied.)

Since under Minn. Stat. 10A.01 "contribution" includes providing anything of value to influence an election, or transfer of funds from a political fund or payment of personal services rendered to a political fund to influence any election, the corporation under the nonconduit plan would be making a contribution; under each of these defined criteria, contrary to Minn. Stat. 211.27.

Federal Law

The foregoing conclusions are supported by reference to the comparable Federal law on the subject.

Under 18 U.S.C. 610, it is illegal for a corporation "to make a contribution or expenditure in connection with any election to any political office." However, under the 1972 amendments to section 610, the term contribution or expenditure was defined to exclude "the establishment, administration, and solicitation of contributions to a separate, segregated fund to be activated for political purposes. Thus, under Section 610 a corporation (such as First Bank System) may have a nonconduit plan, as well as a conduit plan for purposes of making distributions to candidates for Federal office.

However, under Section 611, of Title 18, corporations having Federal contracts may not " ...directly or indirectly make . . . any contribution of money or any other thing of value.... to any political party, committee, or candidate for public office or to any person for any political purposes or use . . . " Under Section 611 a nonconduit plan is prohibited. 1

The extent of the prohibition under Minnesota state law is parallel to Section 611, which prohibits nonconduit plans but permits conduit plans, rather than Section 610, which permits both. This result is confirmed by reference to *Pipefitters Local Union No. 562 v. United States*, 92 S.Ct. 2247 (1972). That case arose under Section 610 prior to the 1972 Federal amendments, but was decided by the Supreme Court after the enactment of the amendments. There a union nonconduit plan was upheld. However, the Court relied upon a wealth of legislative history as a basis for concluding that voluntary nonconduit contribution plans of corporations or unions did not fall within the activity prohibited by Congress. The Court further relied upon the fact that Congress enacted the 1972 amendments to Section 610 (permitting the conduit plan) merely to codify the pre-existing Federal law. In Minnesota, on the other hand, there is an absence of legislative history indicating any intention by the legislature to permit the nonconduit plan. Also, the Minnesota statutes themselves are more stringent than Section 610 as it existed prior to 1972, and are at least as stringent as Section 611. Thus, Minn. Stat. 211.27 prohibits any corporate contribution made directly or indirectly. Section 610 prior to 1972 contained no such language. Likewise, Section 610 prior to 1972, in contrast to the Minnesota statutes, did not expressly exclude furnishing of services of officers and employees from the area

of permitted activity. Therefore, Federal law, to the extent that it permits nonconduit plans, does not provide support for the existence of such plans under the Minnesota law.

Registration as Political Fund

Since we are of the opinion that under Minnesota law, a nonpartisan (conduit) plan is permitted, but a partisan (nonconduit) plan is prohibited, the question then presented is whether a nonpartisan (conduit) plan must be registered and reported by a corporation as a political fund under Chapter 10A (1974). In our opinion, this is not required. A political fund by definition involves an accumulation of funds collected or expended for the purpose of influencing the election of a candidate. Minn. Stat. 10A.01, subd. 16. Since under the conduit plan, all contributions are designated by employees, there is no accumulation which is to be the subject of a decision by the corporation to influence any particular election. It follows that the employee is making the contribution directly to the party or to the candidate's campaign committee. It is not logical or useful to require the corporation to establish a political fund under these circumstances because it would serve no reporting or disclosure purpose, and because the plan is simply a conduit in which all contributions pass through as from the employee to the receiving campaign committee or party, and are reported as such. The fact that the contributions pass through the conduit is irrelevant, and to require the establishment of a political fund is unnecessary.

CONCLUSION

Under this opinion, First Bank System will simply have to make it clear that accumulated, undesignated funds will go only to candidates for Federal office. Contributions may go to State parties or candidates only where designated by the employee.

Although the Commission recognizes that the purpose underlying the establishment of voluntary employee contribution by corporations (both partisan and nonpartisan) may be laudable and beneficial to the health of the political process, the Minnesota Legislature for many decades has not seen fit to enact legislation which would permit a corporation to establish a partisan (nonconduit) plan. Certainly it is appropriate for the Legislature to consider this question in future sessions and also to set forth clearly all areas of permitted corporate activity.

Moreover, under Minnesota law labor unions are not proscribed from making campaign contributions, either directly or through voluntary contribution plans (including partisan plans). We believe that the resulting inequality of treatment between labor unions and corporations likewise deserves careful attention from the Legislature.

Approved by the Minnesota State Ethics Commission **on** September 9, 1974.

I . See Common Cause v. TRW, Incorporated, Civ. No. 980-72 (D.D.C.) in which TRW agreed by stipulation to dissolve its nonconduit plan under Section 611; see also Congressional Record 14829 - 14840, July 27, 1973.